

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3147 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILAVARSINH NARANSINH JHALA

Versus

STATE OF GUJARAT

Appearance:

MR DD VYAS for Petitioner.

Mr.V.B. Gharania, for the respondents.

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/10/96

ORAL JUDGEMENT

The petition was originally filed praying for various reliefs. The petitioner who was Forester at the relevant time was not promoted to the post of Range Forest Officer, when persons junior to him were promoted in the year 1966-67. The petitioner, however, did not choose to challenge his supersession at the relevant time. Thereafter, the petitioner came to be promoted as Range Forest Officer with effect from 4.1.1973. Even thereafter the petitioner did not file any petition or proceedings claiming deemed date of promotion. But only in this petition filed on 11.4.1985 the petitioner prayed

for deemed date of promotion for the post of Range Forest Officer with effect from 1966-67. The claim for such deemed date was grossly belated even when the petition was filed in 1985. The said prayer is, therefore, rejected on the ground of delay, laches and acquiescence without going into the merits of the said prayer.

2. The grievances in respect of prayer clauses 'A', 'D' and 'E' have already been redressed, according to the learned counsel for the petitioner, during the pendency of the petition. The same are, therefore, not required to be considered. As far as prayer clause 'C' is concerned the same has become infructuous as the petitioner has already retired during the pendency of the petition on 4.2.1986.

3. Mr.D.D. Vyas, learned counsel for the petitioner has, however, submitted that the only grievance which now really survives is in respect of the impugned order dated 16th March 1985 (at Annexure G-1 to the petition), by which the Conservator of Forests, Junagadh had not granted permission to the petitioner for crossing the Efficiency Bar with effect from 1.3.1982.

4. As per the settled legal position, before the Department takes any decision to refuse permission to cross Efficiency Bar, the employee is entitled to be given a reasonable opportunity of being heard. Learned counsel for the petitioner states that the petitioner was not given any such opportunity before the Department passed the impugned order dated 16th March 1985 at Annexure G-1 to the petition. No affidavit-in-reply is filed on behalf of the respondents, although the State of Gujarat in Agriculture and Forest Department and Chief Conservator of Forests, Baroda along with two officers of the Department were joined as respondents and the petition was admitted as far back as in 1985.

5. In view of the aforesaid, the Court has to accept the averment made by the petitioner to the effect that the impugned order dated 16.3.1985 at Annexure G-1 to the petition was passed by the Department without giving the petitioner any opportunity of being heard. In view of the settled legal position that the order refusing permission to cross Efficiency Bar cannot be passed without giving the employee reasonable opportunity of being heard, the petition will have to be allowed. The impugned order is, therefore, quashed and set aside and the respondents are directed to reconsider the matter regarding granting permission to the petitioner to cross Efficiency Bar with effect from 1.3.1982 after giving the

petitioner reasonable opportunity of being heard.

6. In case the authorities decide to grant permission to the petitioner to cross Efficiency Bar with effect from 1.3.1982 or with effect from any subsequent date, the consequential benefits including refixation of pay, arrears of difference of salary and other benefits available on that basis shall be given to the petitioner. Since the petitioner has already retired, on 4.2.1986, the respondents shall decide the matter and take necessary consequential steps as expeditiously as possible and in any case within a period of two months from the date of receipt of the writ of this Court or the certified copy of this order whichever is earlier.

7. Rule is made absolute to the aforesaid extent only with no order as to costs.

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